

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 273
SPONSOR(S): Mayfield
TIED BILLS:

Outdoor Advertising

IDEN./SIM. BILLS: SB 566

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Transportation Committee</u>	<u>11 Y, 2 N</u>	<u>Pugh</u>	<u>Miller</u>
2) <u>Local Government Council</u>	<u></u>	<u>Smith</u>	<u>Hamby</u>
3) <u>State Infrastructure Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Chapter 479, F.S., regulates billboards and other forms of outdoor advertising signs. Advertising companies and other owners of outdoor signs must be licensed by the Florida Department of Transportation (FDOT) and obtain permits that regulate height, size and other characteristics of the billboards. County and municipal governments are not precluded from enacting local ordinances regulating outdoor advertising, but these regulations must be in harmony with state and federal requirements.

HB 273 would make significant changes to two sections of law in chapter 479, F.S. The bill would:

- Allow FDOT and sign owners to enter into agreements identifying the specific location of a billboard’s “view zone,” meaning an unobstructed view by passing motorists, and specify in statute the standard dimensions of a view zone.
- Prohibit trees and other vegetation that are part of a beautification project from being planted in a billboard’s view zone.
- Require any governmental entity violating the view zone provisions to pay the sign owner a penalty equal to the lesser of either lost revenue because the sign was blocked or the sign’s fair market value.
- Allow the owner of a lawfully erected billboard that conforms to state and federal requirements for land-use, size, height, and spacing to elevate the billboard at its permitted location if a sound wall blocks or screens the signage.
- Delete references to the Federal Highway Administration’s approval before raising the height of a non-conforming billboard along a federal-aid primary highway.
- Specify that a billboard reconstructed so it can be raised above a sound wall must comply with the Florida Building Code standards and wind-load requirements.
- Require local governments and local jurisdictions to issue permits, if necessary, to reconstruct a sign pursuant to these proposed changes in law. Local governments and local jurisdictions that refuse to issue such permits shall pay just compensation to the sign’s owner.

HB 273 raises no apparent constitutional issues. The bill has no immediate financial impact on the state or on local governments, and will not fiscally impact these governmental entities unless they refuse to allow the specified view zones and increases in sign height, and are required to pay penalties or compensation to the sign owners.

HB 273 would take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government/Safeguard Individual Liberty – HB 273 prohibits trees and other vegetation that are part of a “beautification project” from being planted in a legally erected and permitted billboard’s view zone. The bill requires any governmental entity violating the view zone provisions to pay the sign owner a penalty equal to the lesser of lost revenue because the sign was blocked or the sign’s fair market value. Additionally, the bill allows the owner of a lawfully erected billboard conforming to state and federal requirements for land-use, size, height, and spacing, to increase the billboard’s height at its permitted location if a noise wall blocks or screens the signage. The bill requires local governments and local jurisdictions to issue permits, if necessary, to reconstruct a sign pursuant to this section of law. Local governments and local jurisdictions that refuse to issue such permits shall pay just compensation to the sign’s owners.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida has an estimated 20,900 permitted outdoor advertising signs on 13,700 billboard structures. About 5,900 are considered by FDOT as lawful, non-conforming signs, meaning they were in compliance with federal, state, and, if applicable, local regulations when they were erected, but are not in compliance with current regulations.

Chapter 479, F.S., governs billboards and other forms of outdoor advertising. Advertising companies and other owners of outdoor signs must be licensed by FDOT and obtain permits, regulating height, size and other characteristics of the billboards. The majority of the provisions specify DOT’s duties and authority as they relate to permitting, removing, and otherwise regulating billboards along the interstate highway system and the federal–aid primary highway system, which includes state roads. The chapter also addresses ways to accommodate billboard owners whose signs’ “view zones” are affected by highway beautification projects, such as planting of vegetation, and highway widening or other improvements.

Because federal dollars are used to build and maintain these federal and state roads in Florida, FDOT must adhere to federal laws and regulations concerning billboards. The Highway Beautification Act of 1965 (chapter 23 U.S. Code section 131), chapter 23 Code of Federal Regulations section 750, and Federal Highway Administration (FHWA) Policy Guidance relate to the regulation of billboards. Under federal law, regulation, and policy guidance:

- To be able to remain, nonconforming signs must remain substantially the same as they were on the effective date of the state law or regulations that made them nonconforming.
- Reasonable repair and maintenance of the sign, including a change of advertising message, is allowable.
- Nonconforming signs may continue as long as they are not destroyed, abandoned, or discontinued. States may pass laws for exceptions to be made for nonconforming signs destroyed due to vandalism and other criminal or tortious acts.
- Each state must develop its own criteria to determine when customary maintenance ceases and a substantial change has occurred which would terminate nonconforming rights. When nonconforming rights are terminated under state law, the sign must be removed as an illegal sign without compensation.
- However, lawfully erected signs, even if they are now nonconforming, cannot be removed by a state without payment of just compensation.

Under state law, local governments also may not remove, or order to be removed, lawfully erected signs along the interstate or federal-aid highways without paying the signs' owners just compensation.

A March 2005 memorandum from the FHWA addressed a relatively new issue relating to nonconforming signs – conflicts between sign owners and state transportation agencies over noise attenuation barriers (or “sound walls”) along highways that are blocking billboards. The memorandum concluded that allowing owners of non-conforming billboards to increase the signs' height in such circumstances is inconsistent with federal law and regulations.¹

Current state law clarifies that nothing in chapter 479, F.S., prevents FDOT or other governmental entities from entering into an agreement with a sign owner increasing the height of a lawfully erected sign at its permitted location if a noise-attenuation barrier, visibility screen, or other highway improvement is erected in such a way as to screen or block the sign's visibility. Under such agreements, the affected sign's height can be increased only as much as is necessary to achieve the same degree of visibility from the road as it had previously. If the affected sign is non-conforming and it is located along a federal aid primary highway system (which includes most of Florida's major highways), the FHWA must approve the agreement.

Effect of Proposed Changes

HB 273 amends two sections of chapter 479, F.S., related to visibility and height of lawfully permitted billboards.

Specifically, the bill amends s. 479.106, F.S., to:

- Codify FDOT rules on the “view zone” dimensions of lawfully permitted billboards. It establishes in statute how a view zone is to be measured: the first 500 linear feet within the first 1,000 feet as measured along the edge of the pavement in the direction of approaching traffic from a point on the edge of the pavement perpendicular to the sign's edge facing the highway. The dimensions are in FDOT's outdoor advertising rule, chapter 14-40.030, Florida Administrative Code.
- Specify that a billboard's view zone shall be a continuous 500 feet unless interrupted by naturally occurring vegetation.
- Allow FDOT and sign owners to enter into agreements identifying the “specific location” of a billboard's view zone, and if no agreement is reached, then the view zone is the first continuous 500 linear feet from the sign.
- Prohibit trees and other vegetation that are part of a “beautification project” from being planted in a legally erected and permitted billboard's view zone.
- Require any governmental entity violating the view zone provisions to pay the sign owner a penalty equal to the lesser of lost revenue because the sign was blocked or the sign's fair market value.

The bill also amends s. 479.25, F.S., to:

- Allow the owner of a lawfully erected billboard conforming to state and federal requirements for land-use, size, height, and spacing, to increase the billboard's height at its permitted location if a noise wall blocks or screens the signage. Existing references to visibility screen or other highway improvement are deleted.
- Clarify that in such circumstances, the billboard may be elevated as high as is necessary – even if that means exceeding the state limits of 50 feet high outside an incorporated area and 65 feet high within an incorporated area – so that its visibility is the same as it was before the noise wall was built.

¹ U.S. DOT /FHWA memorandum from Susan Lauffer, director of Office of Real Estate Services to Division Administrators and Directors of Field Services, dated March 8, 2005.

- Delete references to FHWA approval before raising the height of a non-conforming billboard along a federal aid primary highway. This would make Florida law consistent with current federal guidance that non-conforming billboards along federal-aid highways can not be raised.
- Specify that a billboard reconstructed under this section of law must comply with the Florida Building Code standards and wind load requirements.
- Require local governments and local jurisdictions to issue permits, if necessary, to reconstruct a sign pursuant to this section of law. Local governments and local jurisdictions that refuse to issue such permits shall pay just compensation to the sign's owner.

HB 273 takes effect upon becoming law.

C. SECTION DIRECTORY:

Section 1: Amends s. 479.106, F.S., to codify view zone dimensions and method for determining the view zone; and specifies penalties.

Section 2: Amends s. 479.25, F.S., to clarify under what circumstances lawfully erected, conforming billboards may be raised; deletes obsolete language; and provides for payment of just compensation for refusal to issue permits.

Section 3: Specifies this act shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

No direct or immediate impact. But see "D. FISCAL COMMENTS" below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

No direct or immediate impact. But see "D. FISCAL COMMENTS" below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

No direct or immediate impact. But see "D. FISCAL COMMENTS" below.

D. FISCAL COMMENTS:

In the event FDOT or a local governmental entity violates the proposed view zone provisions in s. 479,106, F.S., it would have to pay the sign owner a penalty equal to the lesser of the lost revenue from the screened or blocked billboard or the fair market value of the sign.

Additionally, a local governmental entity that refused to permit reconstruction of a conforming billboard to raise its height above a noise wall would have to pay the sign owner just compensation. A governmental entity violating these two provisions also may have to pay legal costs and expenses if the issue is litigated.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

HB 273 does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the percentage of a state tax shared with counties or municipalities; or reduce the authority that municipalities have to raise revenues.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Resolution 2005-1521-A, regarding Outdoor Advertising and Highway Beautification, was passed unanimously by the Jacksonville City Council on December 13, 2005 and signed by Mayor Peyton on December 19, 2005. This resolution opposes HB 273 and SB 566.²

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

² See Resolution from Tracey Arpen, Office of General Counsel, City of Jacksonville, Florida (December 29, 2005) (on file with House of Representatives, Local Government Council).